

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSCHUSETTS**

**RONALD HEBERT and AIME DENAULT On  
Behalf Of Themselves and Others Similarly  
Situating,  
Plaintiffs**

Case No. 1:17-cv-10922-DJC

**v.**

**VANTAGE TRAVEL SERVICE, INC. D/B/A  
VANTAGE DELUXE WORLD TRAVEL and  
VANTAGE ADVENTURES,  
Defendant**

**PLAINTIFFS' MOTION TO SUPPLEMENT RECORD CONCERNING THEIR  
MOTION TO STRIKE/PARTIAL SUMMARY JUDGMENT**

Plaintiffs/Class Members Ronald Hebert and Aime Denault, on behalf of themselves and others similarly situated (“Plaintiffs”), move to supplement the record concerning their Motion to Strike Defendants’ Second Affirmative Defense (improper forum), Fifth Affirmative Defense (*forum non-conveniens*) and the Notice of Determination of International Treaty Foreign Law pursuant to Fed. R.Civ. P. 12(f), or in the alternative, grant partial summary judgment under Fed. R.Civ. P. 56(c) (“Plaintiffs’ Motion To Strike”).<sup>1</sup> Plaintiffs bring this motion to add to the record excerpts of the deposition testimony of Plaintiff Ronald Hebert. See attached Supplemental Affidavit of Patrick J. Osborne, Esq.

In its Opposition to Plaintiffs’ Motion To Strike, Defendant Vantage Travel Service, Inc. d/b/a Vantage Deluxe World Travel and Vantage Adventures (“Vantage”) argued that “Vantage is entitled to depose both plaintiffs to explore” the issue of whether the Passenger Ticket Contract

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<sup>1</sup> See Docket No. 46. Hearing held October 31, 2018.

containing a purported forum selection clause was ever provided to Plaintiffs.<sup>2</sup> See Docket No. 58.

Vantage also claimed

Mr. Hebert was deposed by Vantage on February 20, 2019. Vantage asked Mr. Hebert about the Passenger Ticket Contract.

BY MR. MUELLER:

Q. Okay. Mr. Hebert, you have in front of you a document marked Exhibit 2. It's from a declaration which was filed in this case back in June 2017. It's entitled "Passenger Ticket Contract." I'm not going to ask you to read through this word for word. But if you could just take a look at this, my question to you is whether you have seen this document before.

A. I have not. This was not on the website.

Q. So this was on not on the website. You do not recall downloading anything that looked like this?

A. No.

Q. And your travel agent did not provide something that looked like this to you?

A. No.

Supplemental Affidavit of Patrick J. Osborne, Esq. Ex. D (Hebert Depo. Trans. At 25:12-26:2).

The deposition testimony rebuts and disproves Defendant's claim that the document identified as the Passenger Ticket Contract (containing a purported forum selection clause) was ever provided to Plaintiffs prior to embarkation.

Plaintiffs request that the Court waive the requirement of a memorandum.

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<sup>2</sup> Vantage contends that the forum selection clause contained in the Passenger Ticket Contract requires that this matter be transferred to court in England or Wales. Vantage has failed to meet its burden as to this issue. See this Court's Memorandum and Order Dated March 2, 2018, Docket No. 25.

WHEREFORE, Plaintiffs request the following relief:

1. That the Court GRANT the Motion to Supplement the Record to include the deposition testimony of Plaintiff Ronald Hebert.
2. That the Court order such other relief as it deems just.

**CERTIFICATION OF COMPLIANCE WITH LOCAL RULE 7.1 (a) (2)**

The undersigned counsel hereby certifies that he has conferred with opposing counsel in a good faith attempt to narrow or resolve the issues set forth in the within motion with the following result: Defendant had no objection to the motion.

/S/ James L. O'Connor  
James L. O'Connor, Jr., Esq. (BBO No. 563450)  
C. Deborah Phillips, Esq. (BBO No. 398270)  
Patrick J. Osborne, Esq. (BBO No. 698109)  
Nickless, Phillips and O'Connor  
625 Main Street  
Fitchburg, MA 01420  
(978) 342-4590  
joconnor@npolegal.com  
dphillips@npolegal.com  
posborne@npolegal.com

**CERTIFICATE OF SERVICE**

I, James L. O'Connor, hereby certify that this document is being filed through CM/ECF system and will be sent electronically to the registered participants as identified on the Notice of Filing (NEF) and paper copies will be served upon those indicated as non-registered participants.

Dated: March 13, 2019

/s/James L. O'Connor  
James L. O'Connor